No. 86-574

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CITY OF SCOTTSDALE, a municipal corporation,
Petitioner,

v.

JOYCE M. CORRIGAN,
Respondent.

PETITIONER'S REPLY BRIEF

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Respondent, as of course she may, restricts herself to challenging the jurisdiction of this Court and does not respond as to the constitutional merit. A terse closing is sufficient:

1. Respondent contends that the decision of the Arizona Court of Appeals rests on inadequate state grounds. The decision below expressly rests on "both federal and state constitutions." Respondent does not deal in any way with *Michigan v. Long,* 463 U.S. 1032 (1983), on which we rely, and under that decision the opinion of the Arizona Court of Appeals is clearly not barred on an adequate state grounds basis.

2. Respondent contends that the petition is untimely. The court of appeals' decision held that the regulation was a taking, with all the consequences which flow from that construct. The Arizona Supreme Court did not review that question, reserving to itself only the question of whether the assumed taking required compensation. As long as there was a possibility of a holding that the federal constitution required compensation and, hence, damages, the decision of the Arizona Court of Appeals was not final, *San Diego Gas & Electric Co. v. City of San Diego,* 450 U.S. 621, 633 (1981). Hence, we could not petition until that question was resolved by the Arizona Supreme Court.

It is the further position of respondent that if our petition was not too late, then it is too early. The argument is that since the state supreme court remanded for determination of damages under the state constitution, we cannot petition until that

question is resolved by the trial court; and here respondent's reliance is on *San Diego Gas & Electric Co., supra.*

But the petition is not premature. The Arizona Supreme Court unquestionably made its compensation decision exclusively on state constitutional grounds and remanded for determination of damages solely on state constitutional grounds. For the reasons set forth at p. 6 of our opening memorandum, the federal question as to the correctness of the ruling on the "taking" is thus now final. The petition is neither too early nor too late; it is at exactly the right time.

CONCLUSION

As we noted in our opening memorandum, the petition should be granted and the case should be heard as a companion to *First English Evangelical Lutheran Church v. County of Los Angeles,* 106 S. Ct. 3292 (1986) (No. 85-1199).

Respectfully submitted,

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